IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:09.02.2007

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.28027 & 28028 of 2006
and
M.P.Nos.1 & 1 of 2006

G.Murugesan ... Petitioner in W.P.Nos.28027 & 28028/2006

Vs.

1. UCO Bank,
Rep.by its Chairman,
Cum-Managing Director,
No.10, B.T.M.Sarani,
Kolkata 700 001.

2. Assistant General Manager,
Disciplinary Authority,
UCO Bank,
Regional Office,
E-5, Arera Colony,
Bhopal 462 016.

3. The Deputy General Manager,
UCO Bank,
Regional office,
No.328, Thambu Street,
Chennai 600 001. ... Respondents in W.P.Nos.28027 & 28028/2006

PRAYER IN W.P.No.28027 of 2006: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the order dated 04.04.2006 bearing Ref.No.ROBP/VIG/OTH/01/2006-2007 issued by the 2nd respondent and to quash the same as being illegal, arbitrary, malafide and without jurisdiction.

PRAYER IN W.P.No.28028 of 2006: This writ petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the order dated 19.02.2003 bearing Ref.No.ST/GEN/3630/2003 bearing Ref.No.PER/TPC/2003/1154 issued by the 1st respondent and to quash the same as being illegal, arbitrary and discriminatory.

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For Petitioner : Mr.N.G.R.Prasad S.C. for
Mr.S.Saravanakumar
For Respondents : Mr.Srinath Sridevan

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O R D E R

W.P.No.28027 of 2006 is filed challenging the charge memo dated 04.04.2006 issued by the 2nd respondent against the petitioner, while W.P.No.28028 of 2006 is filed challenging the order of the 3rd respondent dated 19.02.2003 and also subsequent order of the first respondent dated 26.07.2003, by which the petitioner, who was working as Assistant Manager, UCO Bank, Mount Road Branch, Chennai, was transferred to the regional office, Bhopal.

2. The case of the petitioner is that the petitioner has joined the respondent bank as Clerk in 1981 and he was transferred to Chennai in 1982 and promoted as Junior Manager Grade Scale-I on 01.08.1997 and he belongs to Schedule Caste community. On 06.04.1998, he was transferred to Bhopal, contrary to office memorandum issued by the Government of India dated 24.06.1985 and the petitioner has challenged the same by filing Writ Petition in W.P.No.15458 of 1998 and there has been an order of stay of transfer by this Court on 29.09.1998. Thereafter, the petitioner was transferred to the Mount Road Branch, Chennai on 26.12.2002 as Assistant Manager and relieving order has been passed on 04.01.2003. Since the respondents have transferred and posted the petitioner at Mount Road Branch, Chennai on 26.12.2002 without any condition, the said W.P.No.15458 of 1998 filed by the petitioner challenging the transfer order dated 06.04.1998 was withdrawn as infructuous.

3. It was thereafter, the 3rd respondent has issued transfer order to Bhopal on 19.02.2003 after which, the petitioner has given a representation on 23.04.2003 and the petitioner has also filed W.P.No.13604 of 2003, which was disposed of, with a direction to consider the representation by an order dated 18.06.2003. It was on 26.07.2003, the 1st respondent rejected the representation of the petitioner to retain him in Chennai. The 2nd respondent has issued impugned charge memo dated 04.04.2006, on the basis that the petitioner has not obeyed the order of transfer. In these circumstances, the Writ petitions came to be filed challenging the charge memo as also the transfer orders.

4. The respondents have filed the counter affidavit. According to the respondents, the Writ petition is hit by laches, since the impugned order of transfer dated 26.07.2003, is sought to be challenged in 2006. That apart, according to the respondents, the post held by the petitioner is transferable and because he belongs to Scheduled Caste community, he cannot avoid the order of transfer. It is also denied that the order of transfer is discriminatory. It is also the case of the respondents that since the petitioner has failed to obey the order of transfer, the charge

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memo came to be issued against the petitioner.

5. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner would submit that inasmuch as the earlier transfer order, dated 06.04.1998 was stayed by this Court and pending the said Writ petition, when the petitioner was transferred and posted to Mount Road Branch, Chennai unconditionally, the said Writ Petition in W.P.No.15458 of 1998 became infructuous and therefore, it was withdrawn. The conduct of the respondents in taking advantage of the said fact, especially in the circumstance that the petitioner was transferred to Mount Road Branch, Chennai without any condition, taking as if the dismissal of the Writ Petition as infructuous is in favour of the respondents and based on that, the transfer order was passed on 19.02.2003 and the same was confirmed by the 1st respondent on 26.07.2003 is only an abuse of process and is a breach of trust and understanding.

6. He would also submit that at the time when the earlier Writ petition was dismissed as infructuous, it was with absolute knowledge of the learned counsel appearing for the respondents bank and it can never be treated as an order favourable to the bank, so as to enable to proceed with passing the impugned transfer order.

7. On the other hand, Mr.Srinath Sreedevan, learned counsel appearing for the respondents bank would submit that after the order of transfer passed by the 3rd respondent dated 19.02.2003, the petitioner has in fact made a representation to the 1st respondent on 23.04.2003 requesting to retain him at Chennai and that should be taken as a fresh cause of action. Since the court in W.P.No.13604 of 2003 filed by the petitioner, by an order dated 18.06.2003, has directed the 1st respondent to consider the same and pass orders, based on which the 1st respondent has passed the impugned order dated 26.07.2003, rejecting his representation and therefore, it can never be said as if the earlier posting of the petitioner at Mount Road Branch, Chennai is unconditional.

8. He would also submit that when once the earlier Writ petition was dismissed on 13.02.2003, the original order of transfer, dated 06.04.1998 transferring the petitioner to Bhopal is deemed to have automatically revived and that was the order passed by the 3rd respondent on 19.02.2003 and there is absolutely no infirmity or illegality in it. He would also submit that in cases of transfers, the scope of judicial review is limited, unless it is tainted with mala fide or prohibited by service rules or passed by incompetent authority. by basing reliance on the judgement of the Hon'ble Supreme Court reported in 2001(5) SCC 508, apart from the judgement of this Court reported in 2004(2) MLJ 538.

9. I have heard the learned counsel for the petitioner as also the learned counsel for the respondents and perused the entire records.

10. It is seen that the petitioner while working as Promotee Officer was transferred to Madhya Pradesh Zone, posting at Zonal office, Bhopal by

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the order dated 06.04.1998. The said order of transfer came to be challenged by the petitioner by filing the Writ Petition in W.P.No.15458 of 1998 on various grounds including that the inter zone transfers were to be effected in the month of January and transfer orders to be issued by 15th April each year, apart from many other grounds. This Court while admitting the said Writ Petition, by an order dated 29.09.1998 has granted an order of interim injunction against the Zonal Manager, UCO Bank, Chennai from transferring the petitioner.

11. It is also seen that the respondents have filed a petition to vacate the order of injunction and the said injunction petition was dismissed as infructuous, since it was represented by the counsel for Writ petitioner that the petitioner has been reinstated. That was the order passed on 11.11.1998. It is seen that at the time of filing of the said Writ petition, the petitioner was working as Promotee Officer and therefore, he should have been holding the post as Promotee Officer, on the date when this Court has passed orders, dismissing the W.P.M.P. as infructuous on 11.11.1998.

12. When the said Writ petition was pending the 3rd respondent has passed an order of transfer on 26.12.2002 by transferring the petitioner, working as Officer in the Regional Office, Chennai to the Mount Road Branch, Chennai as Assistant Manager, which is on promotion and in one of the existing vacancies. A reference to the said order of transfer dated 26.12.2002 passed by the 3rd respondent shows that the said order is a transfer on promotion to the petitioner to Mount Road Branch, Chennai from that of officer at Regional Office, Chennai without reference to the Writ petition. In fact immediately on 04.01.2003, the petitioner was relieved from the Regional Office, Chennai where he was holding the post as officer in J.M.G. scale I. Therefore, it is clear that the order of transfer passed by the 3rd respondent on 26.12.2002 is not only without reference to the pendency of the Writ petition but also it was a simple transfer by promotion to a different post.

13. It was based on the said transfer order dated 26.12.2002, it is seen that the learned counsel appearing for the petitioner in the earlier Writ petition in W.P.No.15458 of 1998 has reported as nothing survives due to the subsequent order and therefore, the Writ petition was dismissed by order dated 13.02.2003 in the presence of the learned counsel for the Bank. The order passed by this Court dated 13.02.2003 is as follows:

> "Though the petitioner challenges the order of transfer seeking to quash the order dated 06.04.1998. According to the petitioner, it is an order of transfer. In view of the subsequent order dated 26.12.2002 even according to the learned counsel appearing for the petitioner, nothing survives in this Writ petition and accordingly, the same is dismissed. Consequently, W.V.M.P.No.667 of 2002 and W.P.M.P.No.28710 of 2002 are closed. No Costs."

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14. The peculiar circumstances of this case is that the 3rd respondent having passed the said order of transfer dated 26.12.2002 by posting the petitioner as Assistant Manager at Mount Road Branch, Chennai has chosen to pass the following impugned order on 19.02.2003, which runs as follows:

> "Please refer to the Transfer Order bearing No.IZ/23/98 dated 16.04.1998 addressed to you regarding your transfer to Madhya Pradesh Zone and your subsequent Writ petition (W.P.No.15458 of 1998) filed by you in the High Court of Judicature at Madras seeking cancellation of the said order.
> As the said Writ petition has been disposed of in favour of the Bank you are advised to report to Regional office, Bhopal (erstwhile Zonal Office, Bhopal), in terms of the said transfer order, immediately."

15. The 3rd respondent has unfortunately having promoted the petitioner as Assistant Manager, has taken a stand, as if the Writ petition in W.P.No.15458 of 1998 has been disposed of in favour of the Bank and therefore, directed the petitioner to report to Bhopal office pursuant to the earlier transfer order dated 06.04.1998, presuming as if the earlier transfer order dated 06.04.1998, which was passed against the petitioner, when he was holding the post of Promotee Officer stands revived. It is unfortunate that the 1st respondent to whom a representation has been made has also passed the order, as if the original order of transfer dated 06.04.1998 stands automatically revived, since the Writ petition in W.P.No.15458 of 1998 was dismissed.

16. Even though Mr.Sreenath Sreedevan, learned counsel appearing for the respondents would vehemently contend that by virtue of the conduct of the petitioner in making a representation to the 1st respondent on 23.04.2003, requesting to reconsider the order of transfer dated 19.02.2003 and therefore, it is deemed that the petitioner has accepted the order of transfer dated 19.02.2003 and it is not open to the petitioner to go back to the order of transfer dated 26.12.2002, I am not able to appreciate the same for the simple reason that on the factual situation as I have enumerated above, there was absolutely no question of revival of the earlier order dated 06.04.1998, even assuming that W.P.No.15458 of 1998 was dismissed in favour of the respondents.

17. When the earlier transfer order dated 06.04.1998 was against the petitioner while holding the post of Promotee Officer and subsequently when the petitioner was promoted as Assistant Manager by the 3rd respondent on 26.12.2002 and posted to Mount Road, Chennai from the Regional Office, Chennai as officer J.M.G. Scale I, there is absolutely no question of revival of the earlier order dated 06.04.1998, which would amount to saying that the petitioner, who was promoted as Assistant Manager is reverted back as Promotee Officer. Therefore, there is absolutely no

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difficulty to come to the conclusion that when once the 3rd respondent has passed an order on 26.12.2002, it is not only an independent order without reference to W.P.No.15458 of 1998, by virtue of such order dated 26.12.2002, the earlier transfer order dated 06.04.1998 automatically comes to an end since W.P.No.15458 of 1998 has become infructuous, since that was relating to transfer order of the petitioner when he was holding the post of Promotee Officer and by subsequent order by promoting the petitioner as Assistant Manager and posting him at Mount Road Branch, Chennai on 26.12.2002. Therefore, there is absolutely no question of presuming or assuming, as if by dismissal of the Writ petition the respondents are entitled to automatically transfer the petitioner. Nevertheless it is true that it is always open to the respondents to pass any order of transfer since it is not even the case of the petitioner that the post held by him especially in the promoted post as Assistant Manager is not a transferable post but it is the way in which the transfer order has been passed, which makes the entire impugned proceedings of transfer dated 19.02.2003 and also the order of the 1st respondent dated 26.07.2003 as illegal.

18. This I am emboldened to state because this Court is aware that normally in cases of transfer as it is correctly pointed out by the learned counsel for the respondents by placing reliance on the judgement of the Hon'ble Apex Court rendered in State Bank of India Vs. Anjan Sanyal and others reported 2001(5) SCC 508 the scope of judicial review is limited only in certain cases where a mala fide is attributed or service rules prohibits transfer or such transfers are passed by incompetent authority, but on the facts and circumstances of the case, it is not a simple case of transfer but it is a case of giving promotion to the petitioner and posting at Chennai on 26.12.2002 and then reverting back to the transfer order dated 06.04.1998 to a lesser post, which cannot be permissible in the eye of law.

19. At the same time, it is made clear that it is always open to the respondents to effect transfer on administrative reasons. In view of the above said peculiar facts and circumstances of this case, the impugned transfer order of the 3rd respondent dated 19.02.2003 and the confirmation of the same by the 1st respondent dated 26.07.2003 are set aside and the Writ petition No.28028 of 2006 stands allowed.

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20. Consequently, the impugned charge memo dated 04.04.2006, which revolves around the above said transfer orders, which are quashed by this Court also stands allowed and the impugned charge memo framed by the 2nd respondent dated 04.04.2006 stands quashed. No Cost. Consequently, the connected M.Ps. are closed.

nbj

Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To

1. The Chairman,
UCO Bank,
No.10, B.T.M.Sarani,
Kolkata 700 001.

2. Assistant General Manager,
Disciplinary Authority,
UCO Bank,
Regional Office,
E-5, Arera Colony,
Bhopal 462 016.

3. The Deputy General Manager,
UCO Bank,
Regional office,
No.328, Thambu Street,
Chennai 600 001.

+ 2 ccs to Mr. S. Saravanakumar Advocate SR 8523
+ 2 CCs to M/s Srinath Sridevan Advocate SR 8679 & 8680
LA (co)
sg 19/2/07

Predelivery order in
W.P.Nos.28027 & 28028 of 2006

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